# EXHIBIT 1

UNITED STATES DISTRICT COURT

FOR THE STATE OF CALIFORNIA

WESTERN DIVISION

CERTIFIED COPY

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| RICHARD SOTELO, on behalf of himself and all others similarly situated, Plaintiff, | ) | Case No. 2:18-v-09166-GW-MAA |
| vs. | ) | Pages 1-269 |
| RAWLINGS SPORTING GOODS COMPANY, INC., Defendants. | ) | |

VIDEOTAPED DEPOSITION OF STEPHAN BOEDEKER

TAKEN ON

FRIDAY, FEBRUARY 14, 2020

Job No: 176690

Reported by:

BRENDA R. COUNTZ, RPR-CRR

CSR NO. 12563

Videotaped deposition of STEFAN BOEDEKER, taken at the law firm of Lewis Brisbois, 633 West Fifth Street, Suite 6000, Los Angeles, California, on Friday, February 14, 2020, before Brenda R. Countz, CSR No. 12563.

plaintiff's counsel?

A. I have not considered that but it may be a possible question.

Q. So you haven't done that before?

A. Right now I've probably done that only -- I have asked that kind of question in surveys that were not conjoint studies. But at the very end I had asked about the awareness of a pending lawsuit and then also the question about if they had been contacted to become plaintiffs.

Q. Let's look at paragraph 66 in your report. And you propose that the respondents' desired bat weight will be determined in the preliminary questions, correct?

A. I don't know if they used the number desired but I just put the description of the purchase situation in the conjoint, the CBC part of the study, to give them some context.

Q. And then moving to paragraph 67, the bat's actual weight will be included as an attribute in the conjoint choice task, is that right?

A. Yes, that's in my exemplar. I put that in as an attribute. It's basically an attribute that is almost self-explanatory here because it's

part of the purchase of a baseball bat, the weight as an attribute.

Q. The actual weight attribute will take on five different levels; 18.5, 20, 20.5, 21.8 and 23 ounces; is that correct?

A. In my exemplar here that is correct, yes.

Q. But you mention in footnote 38 that those numbers will depend on the prior answer about what weight the respondent is looking for, correct?

A. Yes. If somebody now bought a 26-ounce bat, then the range will vary around the 26 ounce.

Q. How, exactly, will the actual weight attribute levels be determined for each respondent?

A. I thought I just answered that question. If somebody puts a weight in there, there will be a specific range around that weight.

Q. So when you say specific range, will it always be 1.5 ounces less than the amount on the sticker, which is 18.5 here; then the sticker amount, 20; .5 over the sticker, 20.5; then 1.8

should say.

Q. So you said we'd like it to model the real world.

If that's the case, then should the survey seek to replicate the purchasing behavior and decision-making process of real world buyers?

A. The decision-making is something prepurchase. So I think I testified earlier that I'm interested in the measurable decision rather than the psychology behind the decision. That's not my expertise and that's not necessary to know when I just want to deduce the preferences from choices they make.

That that kind of takes out the psychology where I'm not an expert in that field anyway. So I think that's the main part of creating this environment, to show something that they would see let's say in the online stores or in store shopping.

And that, as I said, can be done with video clips, pictorials or words.

Q. And so that environment, your intention for the conjoint survey is to provide as realistic as possible a hypothetical model; is that correct?

websites I looked at. This is just the context here. Yes, 35. I give it as an example of purchase options.

Q. So are you aware that some brick and mortar stores like Dick's Sporting Goods provide in-store batting cages where customers can practice swinging before they buy a bat?

A. I don't know about Dick's Sporting Goods but I have seen those batting cages where consumers, customers can practice with a real baseball bat.

Q. Do you agree a consumer practicing with a real baseball bat, potentially of different weights, in an in-store batting cage would have a different purchasing scenario from the scenario in your conjoint survey?

A. The purchasing scenario or the experience of the purchase may be different, because that consumer has different preferences.

So as a person who really wants to test the bat and so ultimately that person has an overall list of preference ranking priorities and that goes into their purchase decision.

So they want to touch, feel, swing, hit a ball with the bat. Now that person's

experience is part of this whole -- part of the personal purchase decision that to me is not relevant because I'm just seeing what did he choose in the option.

So maybe that person has a different one and so he may have a certain choice in each menu where he or she is presented with different alternatives.

So ultimately that person has a contribution to the results of the conjoint. And that, again, in a store I can do all this kind of stuff. But when you determine the bat you are trying to buy, I make up the number of $289 and that is outside my budget, I would never buy it.

But to me as the statistician and economist, I'm trying to capture that point of the choice they make, not what led them to the choice.

And then by capturing that they made a certain choice, that they chose an alternative over others, that's what the hierarchical Bayesian then uses to calculate preferences.

Q. So you just made a distinction between what choices a consumer makes and what led them to make the choice.

propose using the standalone term "weight" or the stand alone term "drop" as attributes, correct?

A. Again, in this example I use the actual weight relative to what the stated weight was for this example. I think it was 20. And then when shown the actual weight I can now calculate the deviations from that.

And so then for each numeric deviation I could basically calculate the values of preferences. And what I have done here is to make it neutral, I've shown data points below and above and the actual weight that was stated.

But there would be one of those information bubbles at the actual weight that would then explain why the stated weight is X and here are now -- measurements were taken and the bat actually weighs what you see in this menu for this attribute.

There would be an explanation like that that is actually available to the participants every single time if they don't recall what actual weight means, because that information bubble would be on every single screen they see and they would be reminded of the definition of that attribute.

And then those are being compared and that is being done for all product combinations. That's really the simulation part.

You use the word "hypothetical." It's basically the prices that are in the study with the attributes that are in the study, and the prices that I -- in one of the examples I had a price range. Those are prices that are not hypothetical but they are price ranges I either found in documents or online.

So those are basically prices at which the product was supplied in the actual world.

Q. Okay. You mentioned value. If your survey shows consumers do value the weight or drop of bats, does the price reduction in your simulation consider why consumers value weight or drop?

A. There's no why. It just basically measures the drop but it doesn't explain why.

The why answer is an expression of consumer preferences, basically.

Q. Generally speaking, is a market premium the difference between two market prices?

A. I mean in economics the term market premium is used when products of similar nature

in the past or going into the present at most. So now what happened is the Rawlings did supply a certain number of bats and every bat sold is really like the result of an equilibrium, supply meets demand.

If all bats were sold for 169, that is the number that was supplied in the actual world that was sold and that is the number of units for which damages have to be calculated:

Q. If Rawlings cost to produce the bats was below $79, saying that's the but-for price, does it matter whether they would sell the bats at that price?

A. Again, the but-for world is not a tool to predict what Rawlings would have done if they had disclosed. It's also profitability thinking is not the right measure to make the consumer whole.

The whole idea that damages are tied to profits, I see that a lot more in intellectual property cases where the patent infringer or trademark infringer, they pay the profits. They have to repay the profits they made with the product.

In this case to take an extreme example

calculations here but I describe briefly what is being done. The supply curve is really this curve that correlates, as we discussed earlier, willingness to accept and then the number of units sold.

Now once units are sold, I'm not talking about the supply curve anymore. I'm at a point on the supply curve. That's the equilibrium point where five units were sold at a certain price.

So now I'm looking for those five units. If the product features change and the demand drops, then I'm looking for the new price.

But that sort of price I don't need to know the whole curve because all I need to know is that new point that has two components, one volume and one price.

I don't need to know the whole supply curve, which is many, many combinations of price and volume. Some of them don't lead to an equilibrium, right?

If you think about the simple supply curve demand curve intersection, there is one point at which a transaction happens.

So that's something where what I need

to know is the unit point, the volume point on the supply curve.

Q. Does market price depend at all on the slope of a supply curve?

A. Again, the market price signifies a point. I know I have done that work for corporations where you are trying to figure out what is the best price for a product.

So now the slope of the supply curve is too general a question. Illustrative examples I give is that several manufacturers in the market trying to sell a product but obviously you can go as company-specific supply curves and they all may have different slopes.

I picked a straight line as the simplest illustrative example. But the supply curve is different and decisions about products can be made relative to where you are in terms of the slope of a supply curve.

But again, the supply curve for my purposes doesn't need to be known because I need to know what resulted in transactions and that's the point on the supply curve.

Q. That's the point on the supply curve. What's the "that" that's the point? You said

the willingness to accept the market price happens.

So now the manufacturer basically produces with the best marginal cost and not everybody who bought a bat will be fully compensated.

Q. If some bats have an actual weight that is equivalent to the stated weight, or it's within a margin of difference that consumers don't care about, why do you need to capture all at-issue bats?

MS. POLLACK: Object to the form.

THE WITNESS: That's more -- in the complaint, allegations are made. So for the group of bats, that's the one I call at issue, is where the allegations are true.

Now, if you tell me that there is a situation where the bats may have a stated weight that equals the actual weight, the way I described the model earlier I have a range of weight and then I can measure, right? If it's at .6 ounces different, it doesn't matter. But at 1.5 it starts mattering.

So that's the computational power of the model. It can perform granular calculations

that enable the trier of fact to draw a conclusion.

Now, I'm not the expert who ultimately says what the actual weight difference is. Somebody else would do that. I don't know if there are documents available in the production quality control process. I don't know if there's something out there that would say this bat before it went out to the store, to the retailer, wherever it was sold, there may be documents saying that it was weighed at quality control and it was four ounces too heavy.

So I don't know if there is data out there. I'm providing the court with the model that whatever the facts are in terms of the misstated or correctly stated weight, what the appropriate measure of economic loss is.

BY MR. KLEBANOV:

Q. So the appropriate economic loss measure is the same across class members, even if one class member purchased a bat with a difference in actual and stated weight that was not material to that class member?

MS. POLLACK: Object to the form.

THE WITNESS: The way I proposed to set

up this conjoint study, I can basically calculate the threshold, in a sense, at which it becomes material.

Right now I don't know if there's data about the extra weight of every sold bat so another expert would have to say what is the actual weight situation here, what is the actual weight, what is the stated weight, what is the delta.

And then my model would be able to say for this particular measured difference, here is the economic loss. Or if it's so small that the consumers don't care, then there won't be a loss.

But I'm not the one who provides the input into what the actual weight is. That would either be another expert or there may be documents out there that I'm not aware of at the moment.

BY MR. KLEBANOV:

Q. So I'm not sure I understand. If your model produces a damages figure or figures, how does it account for a consumer who didn't care that the bat's actual weight was different than the bat's stated weight?

MS. POLLACK: Object to the form.

THE WITNESS: That's slightly different, right? First we had talked about a material threshold and that may be .5 ounces, whatever it is.

Now, if a consumer doesn't care, and let's just say there is a three-ounce difference and the consumer says I just don't care, the fact that that bat should have been sold at a lower price if the market had had the right information, then this particular consumer overpaid by that amount.

That bat, the market would have paid say $10 less for an overstated weight like that. And even if that consumer didn't care about that weight difference, he overpaid.

BY MR. KLEBANOV:

Q. Okay, I understand.

A. Or she.

Q. Does your model address the fair market value of Rawlings's bats, absent the alleged misrepresentation here?

A. I think you asked a fair market value question. Fair market value doesn't enter into my model because ultimately the price is what I use in my damages calculation.

A. I've seen books where market premium is used interchangeably with my definition of price premium and that is typically how I used market premium.

But right now I don't know if I want to spend too much time thinking about an example where market premium could have a different interpretation or meaning.

Q. Okay, let's take a look at paragraph 99 of your report.

A. (Perusing.)

Q. Here you describe the need to, "Shift the demand curve in the but-for world vertically so that we reach the actual market equilibrium on the actual demand curve."

What's the reason to shift the but-for demand curve up?

A. The shifting up is basically vertically. I want to now find for a given volume, I will now find what was the price on the original demand curve and that the original demand curve -- I should say the actual world demand curve where transactions actually happened, that has the market equilibrium defined by volume and the price.

If the product with the changed attribute is perceived inferior to the original product, prices will go down.

Now I have to find the difference in the two prices at the volume point that sold in the actual world, which is the volume point of the original actual market world equilibrium.

Q. That shift in the demand curve could indicate an increased willingness to pay in the but-for world; is that correct?

A. An increased willingness to pay?

Q. An increasing willingness to pay, yes.

A. In the but-for world under my definition of the but-for world where the product may be perceived as inferior, the willingness to pay would go down.

So it would be a decrease in the willingness to pay.

Now what it does is it looks at the willingness to pay, but only in so far as it's a differentiator between the buyer and the non-buyer. Ultimately it's a price that's being reported.

In this example it goes down to $10. That means that the price is $10. Individuals

first sentence.

You state, "The data as described above can be applied to test whether the economic loss differs between, one, specifications of the misrepresentation, ounce versus drop; two, bat size and, three, brand loyalty."

How did you choose these three dimensions?

A. Those were like overall attributes I had discussed before. So here especially I'm saying whatever I have in the study, I can now test if this is a uniform price drop or it may differ.

What I'm saying here is that the model is flexible enough to calculate that separately. So it's not that it's a one size fits all so I can run calculations within the model that can answer those questions if they become relevant.

Q. Why didn't you include that material or certification as one of the three dimensions?

A. I could have put five down there.

Q. So this is subject to change?

A. This is basically, I picked the three, the misrepresentation because that's what the study is all about.

Q. Do you anticipate you will have access to sales data for all the different products?

A. That is also something that will become very important in the merits phase. Sales data would have to be made available.

On the other hand, if granular sales data aren't available, then more summarized or aggregate data can be used to calculate class-wide damages.

That does not yet take into account an allocation to class members but at least the overall size of class-wide damages could be quantified that way.

Q. What do you mean by allocation to class members?

A. Let's say I'm calculating if there are damages and the total class-wide damages are $25 million, just as an example. Now that is the size of the pool of all damages aggregate.

Now, the judge may decide and say everybody who bought a bat gets X dollars per bat they bought, or it could be more refined and say you get relative to what you paid, right?

So it's all ultimately up to the courts how class-wide damages will be distributed, would

weight, somebody else would have to give that number to me as an input.

Q. In 101 you also state that you will have data available from third-party retailers.

What's the basis for that understanding?

A. There are third-party retailers who sell transactional data. So if Rawlings doesn't have data about all their sales, then I don't know what the technical term is through subpoena so we can get the data.

There are also data compilations that can be purchased from data collection companies that basically create databases of retail purchases.

Again, that is something that I haven't researched yet so I don't know what is available. But in general third-party data is available for a broad number of products and markets.

Q. So you don't know right now if that data would be from all third-party retailers or just some, correct?

A. That's correct, I haven't done any research in that.

Q. If the data is only from a subset of

deal with missing data, several interpolations on data imputation methodologies that I've experienced in using in those cases.

MS. POLLACK: Okay, I don't have any further questions.

MR. KLEBANOV: Likewise.

THE VIDEOGRAPHER: Okay, this concludes today's video deposition. The time is approximately 6:00 p.m.

We are off the record.

(Whereupon, the deposition was concluded at 6:00 p.m.)

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the_____day of_____, 2020, at_____, California.

_____

W I T N E S S

STATE OF CALIFORNIA ) SS
COUNTY OF LOS ANGELES )

I, BRENDA R. COUNTZ, Certified Shorthand Reporter No. 12563 for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter transcribed and that the same is a true, correct, and complete transcript of said proceedings.

Before completion of the deposition, review of the transcript [X] was [ ] was not requested. If requested, any changes made by the deponent during the period allowed are appended hereto.

I further certify that I am not interested in the outcome of the action.

Witness my hand this 15th day of February, 2020.

Brenda R. Countz

Brenda R. Countz, CSR No. 12563

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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